1959 O. A. G.

64-1332, supra, must be complied with. Also, an appro-riation would be necessary for at least the amount of money to be expended in the current year before contracts for such busses are executed.

OFFICIAL OPINION NO. 9

April 29, 1959

Honorable Robert S. Webb
Public Service Commission of Indiana
401 State House
Indianapolis 4, Indiana

Dear Mr. Webb:

This is written in answer to Past-chairman John W. Van-Ness' letter of March 5, 1959, which requested an Official Opinion on the subject of stock-splits and stock dividends by a public utility corporation, which letter reads, in part, as follows:

“A. Do the Indiana General Corporation Laws (Burns’ 25-201 et seq.) and/or the Indiana Public Service Commission Act (Burns’ 54-501 et seq.) pro-vide for the issuance by the public utility corporations of its stock for the purpose of:

1. Stock Dividends
2. Stock-splits

“B. Do the Indiana General Corporation Laws (Burns’ 25-201 et seq.) and/or the Indiana Public Service Commission Act (Burns’ 54-501 et seq.) pro-vide for the issuance by the public utility corporations of its stock in dividends in consideration of a transfer from its earned surplus account to its capital account.

“C. Does this Commission, in the absence of a spe-cific enumeration by the Legislature that such stock dividend issues may be made by public utility corpora-tions, have the authority to interpret the said acts as either authorizing or not authorizing such stock divi-dend issues and such stock-splits.”
As indicated in the letter, consideration of stock transactions by a public utility corporation necessitates consideration not only of the Public Service Commission Act, being the Acts of 1913, Ch. 76, as amended, as found in Burns' (1951 Repl.), Section 54-501 et seq., but also the Indiana General Corporation Act, being the Acts of 1929, Ch. 215, as amended, as found in Burns' (1948 Repl.), Section 25-201 et seq. The two acts, insofar as they pertain to the same subject matter and relate to the same class of things are in pari materia and should be read together in the consideration of the corporate activities referred to in the letter.


In regard to the provisions in these two acts relating to stock dividends, the Acts of 1929, Ch. 215, Sec. 12, as found in Burns' (1948 Repl.), Section 25-211, as amended by Ch. 10, Sec. 1 of the Acts of 1959, being part of the Indiana General Corporation Act, states, in part, as follows:

"Dividends may be paid in cash, in property or in shares of the capital stock of the corporation, but no dividend payable in cash or property shall be paid out of surplus due to or arising from unrealized appreciation in value, or from revaluation of assets * * *." 

Thus, this act provides that every corporation for profit has the power to issue stock dividends subject, of course, to the other related provisions of the act. Whether a corporation, being a public utility, is placed in any different position insofar as stock dividends are concerned depends upon the related regulatory provisions of the Public Service Commission Act. The Acts of 1913, Ch. 76, Sec. 88, as found in Burns' (1951 Repl.), Section 54-501, being a part of the Public Service Commission Act, states as follows:

"No public utility shall hereafter issue for any purposes connected with or relating to any part of its business, any stocks, certificates of stock, bonds, notes or other evidences of indebtedness, payable at periods of more than twelve [12] months, to an amount exceeding that which may from time to time be reasonably necessary, determined as herein provided, for the pur-
pose for which such issue of stock, certificates of stock, bonds, notes or other evidences of indebtedness may be authorized.”

The purposes for which the stock issue may be authorized are found in the Acts of 1913, Ch. 76, Sec. 90, as amended, as found in Burns' (1951 Repl.), Section 54-503, and are as follows:

“A public utility, as defined in section 1 of this act, may, with the approval of the commission, issue stock, certificates of stock, bonds, notes or other evidence of indebtedness payable at periods of more than twelve [12] months after the date thereof, for the purpose of and to the extent required for obtaining funds sufficient for, (a) the acquisition of property, material or working capital, or (b) the construction, completion, extension or improvement of its facilities, plant or distributing system, or (c) the improvement of its service, or (d) the discharge or lawful refunding of its obligations, or (e) the reimbursement of its treasury for money actually expended from income, or from any other money in the treasury of the public utility, for such purposes * * *.”

The Acts of 1913, Ch. 76, Sec. 89, as amended, as found in Burns' (1951 Repl.), Section 54-502, recites the requisite consideration for stock issued as follows:

“No public utility shall issue any stock or certificate of stock, except in consideration of money or of labor or property at its current fair cash value as found and determined by the commission actually received by it. * * *”

None of the sections of the Public Service Commission Act specifically provide for the issuance of stock dividends, nor, on the other hand, do they contain a prohibition of such an issuance. Therefore, if a stock dividend is for a purpose and the consideration required by said act, it would be implicit that the public utility corporation would be permitted to issue stock dividends pursuant to the general corporate power given it by the Indiana General Corporation Act and particularly
Burns’ 25-211, supra, subject to the regulatory provisions of the Public Service Commission Act.

As can be seen in Burns’ 54-503, supra, one of the purposes for issuing stock may be that of obtaining funds sufficient for the acquisition of working capital. It is stated in Fletcher, Cyclopedia Corporation, Vol. 11, Sec. 5359, pp. 1119, 1120, as follows:

“A stock dividend is a dividend payable in reserved or additional stock of the corporation, instead of in cash or in property, the purpose of which is generally to capitalize a portion of the company’s earnings in order to conserve working capital.” (Our emphasis)

The ordinary stock dividend, having for its purpose the conservation of working capital, is thus an issuance of stock for purposes contemplated and permitted by Burns’ 54-503, supra.

As stated in Burns’ 54-502, supra, such issuance must be “in consideration of money or of labor or of property at its current cash value as found and determined by the commission actually received by it.” Whether a stock dividend would be permitted by the Public Service Commission Act would then depend upon whether this consideration requirement is met. Fletcher, Cyclopedia Corporation, Vol. 11, Sec. 5361, p. 1127, states the following general rule regarding stock dividends:

“A stock dividend is property payable only from surplus and in the absence of a surplus justifying it such a dividend may not be lawfully issued.”

Section 5362.1, p. 1133, of the above treatise characterizes the effect of the dividend as follows:

“As indicated in the previous section the effect of the stock dividend is to capitalize earned or other surplus, according to the required amount of capital to be represented by the new issue of shares. This capitalization of surplus is regarded as the payment for the new shares which are issued by way of a dividend.” (Our emphasis)
The Court, in *In re Strong's Will* (1950), 198 Misc. 7, 19, 96 N. Y. S. (2d) 75, 86, stated it another way:

“Essentially, however, a dividend constitutes a distribution of earnings, and a stock dividend is made by the issuance and delivery to stockholders of additional stock, supported by assets, usually earnings, transferred to capital. It amounts to a cash dividend and a simultaneous reinvestment thereof with the company by the stockholder, and the stockholder receives additional stock from the company as evidence thereof.” (Our emphasis)

As the above cited language indicates, the effect of the transfer of earned surplus is a receipt by the corporation, for retention, of money or property, as the case may be, in the capital account. This receipt meets the consideration requirements of Burns’ 54-502, *supra*. Therefore, both the purpose for which the stock dividend is being issued and the consideration therefor are accordingly provided therein.

Much of the above in regard to stock dividends would also be applicable in the consideration of the acts in providing for stock-splits. Fletcher, Cyclopedia Corporation, Vol. 19, Glossary, p. 725, defines a stock-split as follows:

“Split-up—When a corporation decides to issue a greater number of shares to its stockholders in exchange for their present holdings this is commonly referred to as a split-up.”

Insofar as the requirements of consideration contained in the acts are concerned, as set out above, it is in fact an issuance of stock in consideration of property at its current fair cash value, i.e., new certificates are exchanged for old, both being of equal value at the time of exchange but representing a greater number of shares subsequent to the exchange. The practical effect of this corporate practice is to reduce the market price of the units and thus increase the marketability of new share units issued to acquire working capital.

See: Fletcher, Cyclopedia Corporation, Vol. 11, Sec. 5362.1, p. 1133.
Therefore, in answer to question A of the letter, it is my opinion that both the Indiana General Corporation Act and the Public Service Commission Act permit the issuance by the public utilities of stock for the purpose of stock dividends and stock-splits.

In answer to your question B the discussion concerning the nature and characteristics of a stock dividend would apply, i.e., a stock dividend itself is composed in part of a transfer from earned surplus account to capital account and it is this transfer which constitutes the receipt of the consideration required for stock issuance by the Public Service Commission Act.

In regard to the provisions of the Indiana General Corporation Act, your attention is called to the Acts of 1929, Ch. 215, Sec. 6, as amended in 1953, as found in Burns' (1957 Supp.), Section 25-205(e), which specifically recognizes the transfer from earned surplus account to capital account as the consideration for the issuance of share or stock dividends by all corporations. This was not a new concept created in 1953 by the General Assembly of Indiana, and it appears from the Digest of January 26, 1953, accompanying the amendatory Bill, that its purpose in this amendment was to insure that shares issued as a stock dividend would not be assessable. The practice of making stock dividends by both public utilities and other corporations for profit was well established before this 1953 amendment to Ch. 215, Sec. 6 of the Acts of 1929.

Further, although the letter doesn't disclose the commission's practice in the past concerning petitions for approval of stock dividends and stock-splits, I understand that the commission has considered such petitions and approved or disapproved them according to the facts of the particular case. This existing past administrative practice merits calling to your attention the language of the Supreme Court in Gross Income Tax Div. v. Colpaert Realty Corp. (1952), 231 Ind. 463, 478, 109 N. E. (2d) 415:

"While not controlling, the contemporaneous construction of a statute by those charged with the administration of it is entitled to great weight, and should not be interfered with unless there are very cogent and persuasive reasons for departing from it."
Therefore, it is my opinion that both the Public Service Commission Act and the Indiana General Corporation Act permit the transfer from earned surplus account to capital account as the consideration for the issuance of stock dividends by public utilities.

Question C pertains to the commission’s authority to interpret the Indiana General Corporation Act and the Public Service Commission Act as authorizing or not authorizing stock-splits and stock dividends. The letter indicates that the language used by the Indiana Supreme Court in its opinion in the case of *In re Northwestern Indiana Telephone Co.* (1930), 201 Ind. 667, 171 N. E. 65, might preclude the commission’s making a determination of its authority in this matter. However, the exact language which is referred to in that case is found in pages 675 and 676, and is as follows:

“It (the Commission) must judge of its powers and determine the question of its jurisdiction, and, to this extent only, may it interpret statutes by giving them what is known as a ‘practical construction’ as distinguished from a judicial construction, which is strictly a judicial function.” (Our emphasis)

It is therefore my opinion that the commission does have the authority in the first instance to administratively interpret the applicable statutes as either authorizing or not authorizing such stock dividends and stock-splits. Any subsequent judicial decision will either confirm or set aside the administrative interpretation, but a difference between administrative and judicial interpretations and statutory constructions does not deny the basic authority of the commission to interpret and determine its own power and jurisdiction when the question is presented and its determination is necessary to the administrative functions of the commission.

Summarizing, in answer to question A, it is my opinion that the Indiana General Corporation Act and the Public Service Commission Act permit the issuance of stock by public utilities for the purpose of stock dividends and stock-splits; and, in answer to question B, that said acts permit an issuance of stock as a stock dividend by a public utility in consideration of a transfer from its earned surplus account to its capital account. In answer to question C, it is my opinion that the
commission has the authority to interpret the said acts and to initially determine its own power and jurisdiction.

OFFICIAL OPINION NO. 10

May 1, 1959

Mr. T. M. Hindman
State Examiner
Indiana State Board of Accounts
304 State House
Indianapolis 4, Indiana

Dear Mr. Hindman:

This will acknowledge receipt of your letter requesting an Official Opinion with respect to the following question submitted to you by a township trustee:

"'Is it proper and is it correct to pay Special Judge cost for the Justice of the Peace Court? Kindly advise and if it is proper, tell me what fund or funds to charge said cost to.'"

The Indiana statutes do not specifically require the payment of additional costs by the parties when their action is tried or pending before a special justice of the peace. For this reason, any fees or emoluments payable to a special justice would not be payable from a special fund accumulated for that purpose out of the costs of a particular action heard by a special justice. However, a special justice of the peace is entitled to some form of compensation for his services in certain cases and this is dependent upon statute.

One of the statutes pertaining to a special justice of the peace is Acts of 1903, Ch. 162, Sec. 1, as amended, and as found in Burns' (1946 Repl.), Section 5-122, which reads as follows:

"In any and all townships in which is located a city having a population, as shown by the last preceding United States census, of fifty thousand [50,000] or more, if, from any cause, any justice of the peace in such township shall be unable to attend and preside